



## Rother District Council

Report to - Planning Committee  
Date - 15 August 2019  
Report of the - Executive Director  
Subject - Application RR/2019/1271/T  
Address - 1 The Orchard  
Etchingham  
Proposal - T5 - Oak - Fell

[View application/correspondence](#)

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**RECOMMENDATION:** It be **RESOLVED** to **GRANT CONSENT**

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**Head of Service: Tim Hickling**

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**Applicant:** Ms S. Lowe – Subsidence Management Services  
**Agent:** Mrs K. Fisher – Environmental Services  
**Case Officer:** Miss Andrea Ingram  
(Email: [andrea.ingram@rother.gov.uk](mailto:andrea.ingram@rother.gov.uk))

**Parish:** ETCHINGHAM  
**Ward Member(s):** Councillors J Barnes and Mrs E Kirby-Green

**Reason for Committee consideration: Member referral: Cllr Mrs E Kirby-Green**  
The Etchingham Parish is very concerned about this. They have received conflicting advice from both their insurer and expert who suggest that felling the oak would not solve the problem and in fact would likely make it worse and could well impact on adjoining properties.

**Statutory 8 week date: 18 July 2019**  
**Extension of time agreed to: None**

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This application is included in the Committee site inspection list.

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### **1.0 SUMMARY**

1.1 In view of evidence submitted in support of the application it is highly probable that the tree is causing subsidence damage to 1 The Orchard. The concerns about heave would be addressed by the applicant's surveyor.

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### **2.0 SITE**

2.1 The property is a detached bungalow built in the late 1990s. The oak T5 is situated on the verge which borders Church Lane and which is managed by Etchingham Parish Council. The tree overhangs the back garden of no. 1

The Orchard. The site is within the High Weald Area of Outstanding Natural Beauty (AONB).

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### **3.0 PROPOSAL**

- 3.1 The application is to fell the oak tree T5 as it has been identified as the principal cause of subsidence damage to no. 1 The Orchard. An engineer's report has been submitted with the application to support this claim. The work would also involve the containment of other unprotected vegetation to retain it at its current size.
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### **4.0 HISTORY**

- 4.1 RR/2015/3056/T Crown reduction to Oak and Ash trees. Approved.
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### **5.0 CONSULTATIONS**

#### **5.1 Planning notice**

- 5.1.1. No comments received.

#### **5.2 Town/Parish Council - **OBJECTION****

- 5.2.1 *Etchingham Parish Council (EPC), owner of the tree in this application, have taken advice from their insurers and have undertaken a LANTRA inspection of the tree. EPC will be submitting its own Application for work on this tree for tree health and safety and is told this will include a request to be allowed to undertake extensive crown reduction along with other measures that would be beneficial to both this mature oak and neighbouring properties without danger of incurring the potential of 'heave' that would, in fact, be a possible outcome of felling. Heave, EPC is told, cannot be curtailed once it starts and might well cause extensive damage not just to the immediately adjacent property but to others situated on and above the root perimeter of this large tree.*

- 5.2.2 The Parish Council have submitted a Tree survey, Inspection and Arboriculture report which assess the condition of the tree.
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### **6.0 LOCAL FINANCE CONSIDERATIONS**

- 6.1 If the Council refuses consent for the tree to be felled, in order to prevent further damage to the property it would have to be underpinned at a cost of around £75,000. The Council would become vulnerable to a claim for compensation for the costs of the underpinning.
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## **7.0 APPRAISAL**

- 7.1 The oak tree is a mature specimen which is situated on the verge next to Church Lane and just beyond the rear boundary of no. 1 The Orchard. The tree has considerable amenity value due to its size and location.
- 7.2 No 1 The Orchard was built relatively recently in the late 1990s, so it is surprising that the property is showing signs of subsidence and such severe cracking.
- 7.3 The findings of the technical report submitted with the application are that the soil is clay and oak tree roots are present in the vicinity of the foundations. Tests have been carried out to determine the degree of desiccation of the soil and the results confirmed that drying had taken place. This would cause the clay soil to contract. Levels monitoring has been carried out since September 2017, which indicated that the extension had dropped particularly on the north east corner and the movement is seasonal which points to vegetation being the cause. For these reasons there is a high probability that the oak tree is the cause of the damage and it would be expected to get progressively worse.
- 7.4 Damage that could occur following felling is heave when the soil becomes saturated. This is a particular concern of the Parish Council. However, this would normally be taken into account by the applicant's surveyor to prevent further damage. The likelihood of heave occurring was checked with the applicant on the 15 July 2019 and they confirmed that their engineer would have had to be satisfied that heave would not occur when recommending felling.
- 7.5 A separate report has been commissioned by the Parish Council, which assesses the physical and structural condition of the oak tree. However this does not address the subsidence issue which is the subject of this application or heave. If the Parish Council wish to challenge the need to fell the tree this still can be resolved between the Parish Council and the applicant as a separate private matter.
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## **8.0 PLANNING BALANCE & CONCLUSION**

- 8.1 The Parish Council requested that the application is deferred until they produced their own arboricultural report. This has now been received but this report does not address the subsidence issues with the tree or assess the likelihood of heave. The application has been dealt with based on the information submitted and this would not prevent the Parish Council challenging the applicant's conclusions about the tree at a later date and the matter can be reconsidered by the Council in a separate application.
- 8.2 Notwithstanding the recommendation to fell in the light of the submitted information, the applicant still requires the consent of the tree's owners (the Parish Council) to carry out the felling.
- 8.3 If the Council refuses consent for the tree to be felled, in order to prevent further damage to the property we are advised that the dwelling would have

to be underpinned at a cost of around £75,000. The Council would become vulnerable to a claim for compensation for the costs of the underpinning.

- 8.4 No one wants to see a healthy tree felled unnecessarily. However, damage to the property is equally not acceptable. As such the felling could be supported subject to replacement planting with a tree species with a low water demand such as hornbeam. If the Parish Council wished to submit a further application based on their own findings then this can be determined separately.

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## **RECOMMENDATION: GRANT CONSENT**

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### **CONDITIONS:**

1. This consent is valid for two years beginning with the date of its grant and the works for which such consent is granted may only be carried out once, in accordance with The Town and Country Planning (Tree Preservation)(England) Regulations 2012.
2. The felling of the oak (T2) is subject to the planting of one hornbeam (*Betula carpinus*) at least 2m in height which shall be planted in accordance with recognised good practice as set out in BS 4428:1989 Code of practice for general landscape operations (excluding hard surfaces) before 31 March 2019 in a position no further than 3m from position of the original oak tree. Any changes to these requirements would have to be agreed in writing by the Local Planning Authority.
3. If within a period of five years from the date of planting the tree (or any other tree planted in replacement of it) is removed, uprooted, destroyed or dies, another tree of the same size and species shall be planted at the same place within the first planting season following removal, uprooting, destruction or death of the original tree.
4. All works shall be carried out in accordance with BS3998:2010 Recommendations for Tree work.

### **NOTES:**

1. You would need to obtain the owner of the tree's permission to carry out this work to it. It is understood that Etchingam Parish Council will be submitting its own tree works application to work on this oak tree (T5) for the tree's health and safety. This will include a request to be allowed to undertake extensive crown reduction along with other measures that would be beneficial to both this mature oak and neighbouring properties without danger of incurring the potential of 'heave'. The Council is happy to determine this further application; however the matter would need to be resolved between you and the Parish Council.